Affirmed and Opinion filed March 17, 2022.

In The

Fourteenth Court of Appeals

NO. 14-20-00356-CV

THE CITY OF AUSTIN, TEXAS; THE CITY COUNCIL OF AUSTIN; AUSTIN MAYOR STEVE ADLER, IN HIS OFFICIAL CAPACITY; THE HONORABLE AUSTIN CITY COUNCIL MEMBERS NATASHA HARPER-MADISON, DELIA GARZA, SABINO RENTERIA, GREGORIO CASAR, ANN KITCHEN, JIMMY FLANNIGAN, LESLIE POOL, PAIGE ELLIS, KATHIE TOVO, AND ALISON ALTER, IN THEIR OFFICIAL CAPACITIES; AND THE HONORABLE AUSTIN CITY MANAGER SPENCER CRONK, IN HIS OFFICIAL CAPACITY, Appellants

V.

FRANCISCA ACUÑA, SUSANA ALMANZA; JEFFERY L. BOWEN; WILLIAM BURKHARDT; ALECIA M. COOPER; ROGER FALK; SETH O. FOWLER; RANDY HOWARD; MARY INGLE; PATRICIA KING; FRED I. LEWIS; BARBARA MCARTHUR; ALLAN E. MCMURTRY; LAURENCE MILLER; GILBERT RIVERA; JANE RIVERA; JOHN UMPHRESS; JAMES VALADEZ; AND ED WENDLER, JR., Appellees

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On Appeal from the 201st District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-19-008617

O P I N I O N

In this appeal from a judgment rendered after a non-jury trial, we are called upon to construe the zoning enabling statute. The City of Austin is undertaking a comprehensive revision of its zoning ordinances, and the parties dispute whether the City is required to comply with the statute's written-notice and protest provisions. The statute requires compliance with these provisions for certain zoning "changes," but not for the initial adoption of zoning ordinances. The City Parties maintain that a comprehensive revision of zoning ordinances is more like the initial adoption of city-wide zoning, and thus, those provisions should not apply. A number of property owners disagreed and filed this suit. The trial court agreed with the property owners and rendered declaratory and injunctive relief. The City Parties appealed, and the appeal was transferred to this court.[1]

We conclude that a comprehensive revision "changes" existing zoning ordinances, and thus, the statute's written-notice and protest provisions apply. The City Parties also contend that the declaratory and injunctive relief rendered departs from the scope of the statute and is overly broad and impermissibly vague, but under the binding precedent of the transferring court, the City Parties failed to preserve these complaints. We accordingly affirm the trial court's judgment.

I. BACKGROUND

The City of Austin is developing a comprehensive revision of its Land Development Code (the "LDC Revision"). Its zoning commission, named the Planning Commission, held a public hearing on October 26, 2019, and published a

[1] The case arrives here from the Third Court of Appeals in Austin pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001. Because this is a transfer case, we apply the precedent of the Third Court of Appeals to the extent it differs from our own. *See* TEX. R. APP. P. 41.3.

newspaper notice of the hearing, but did not provide individual written notice to property owners. In addition, City personnel have stated in public memoranda, at public hearings, and on the City's website, that zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the LDC Revision. Nevertheless, more than 14,000 property owners have filed protests.

Nineteen property owners ("the Protesting Parties") filed this suit against the City of Austin, the City Council, and in their official capacities, the mayor, the council members, and the city manager, alleging that the failure to provide written notice of the Planning Commission's public hearing and to recognize property owners' protest rights violate Chapter 211 of the Texas Local Government Code. After a bench trial on stipulated facts and many exhibits, the district court agreed and granted the Protesting Parties' requested declaratory and injunctive relief.

In their first appellate issue, the City Parties contend that the trial court erred in finding that the City Parties violated Texas Local Government Code §§ 211.006 and 211.007 by failing to provide written notice to all affected property owners of the Planning Commission's public hearing and by failing to recognize property owners' protest rights. In their second issue, the City Parties argue in the alternative that the declaratory and injunctive relief rendered departs from the scope of the statute and is overly broad or impermissibly vague.

II. STANDARD OF REVIEW

The central dispute in this case presents questions of statutory construction. These are questions of law to which we apply the de novo standard of review. *See Bush v. Lone Oak Club, LLC*, 601 S.W.3d 639, 647 (Tex. 2020). In construing a statute, our primary objective is to give effect to the legislature's intent as expressed in the statute's language. *In re Tex. Educ. Agency*, 619 S.W.3d 679, 687 (Tex. 2021)

(orig. proceeding). We begin with the statute's text, for that is the most reliable guide to the legislature's intent. *See Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019); *Sunstate Equip. Co., LLC v. Hegar*, 601 S.W.3d 685, 690 (Tex. 2020). We apply the text's plain meaning unless (1) the legislature has prescribed definitions, (2) the words have acquired a technical or particular meaning, (3) a contrary intention is apparent from the context, or (4) a plain-meaning construction leads to nonsensical or absurd results. *Tex. Educ. Agency*, 619 S.W.3d at 687. We interpret the statute's terms consistently throughout the statute. *Sunstate*, 601 S.W.3d at 690. We will not turn to extrinsic sources unless "the text reveals the statute is ambiguous, or applying its plain meaning would produce an absurd result" that the legislature could not have intended. *Id*.

III. NOTICE

In a home-rule city, a zoning commission must recommend zoning districts and zoning regulations to the city's governing body. TEX. LOC. GOV'T CODE ANN. § 211.007(a). Under the default procedure, which was followed here, the zoning commission must hold public hearings on its preliminary report before submitting a final report to the city's governing body. *Id.* § 211.007(b). The governing body then holds a public hearing on the final report. *Id.* This case is concerned with notice of public hearings before the zoning commission, not public hearings solely before the City Council.

A. The statutory text requires written notice of proposed changes in zoning classifications.

The City Parties first assert that the written-notice provision applies to proposed zoning changes only with respect to individual properties or small areas, and that the LDC Revision instead is similar to initial zoning for three reasons.

First, the City Parties argue that the LDC Revision is based on policy considerations applicable to the City as a whole. This argument is not persuasive because all zoning regulations must be adopted in accordance with a comprehensive plan. *See* TEX. LOC. GOV'T CODE ANN. § 211.004(a). Even an individual property can be rezoned based on policy considerations that apply to the entire city. *See, e.g.*, *City of Pharr v. Tippitt*, 616 S.W.2d 173, 175 (Tex. 1981) (rezoning of a single 10.1-acre lot); *see also City of Waxahachie v. Watkins*, 154 Tex. 206, 210–13, 275 S.W.2d 477, 480–81 (1955) (rezoning area of less than a half acre).

Second, the City Parties contend that the LDC Revision process has been widely publicized. This argument is beside the point. The Protesting Parties allege only the violation of the state zoning statute, not the denial of due process. The zoning statute's notice requirements "must be rigidly performed," and if the statute requires written notice that the City Parties failed to give, then the actions taken without such notice are invalid. *Bolton v. Sparks*, 362 S.W.2d 946, 950 (Tex. 1962).

Third, and most importantly, the City Parties maintain that the LDC Revision is like initial zoning because it is a comprehensive revision that applies city-wide. They contend that notice by publication applies to original zoning and that written notice applies only to "specific properties or limited areas." They argue that the statute does not address comprehensive zoning revisions, which they assert is more akin to initial zoning, and thus, notice only by publication should apply.

Regarding the adoption of zoning regulations and district boundaries, § 211.006(a) provides as follows:

> The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for *adopting* and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an

> opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

TEX. LOC. GOV'T CODE ANN. § 211.006(a) (emphasis added).

The written-notice provision applies to "a proposed change" in zoning classifications, but the statute contains no provision limiting its application to "specific properties or limited areas":

> Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. . . .

Id. § 211.007(c).

The provision for notice by publication applies to the adoption of a "zoning regulation" or "district boundary," while the written-notice provision applies to "a proposed change" in a "zoning classification." The parties do not distinguish between changes in zoning regulations or district boundaries, on one hand, and changes in zoning classification, on the other, and indeed, case law generally treats the terms as synonymous.[2] Thus, in terms of the statutory text, the question is whether the LDC Revision includes "a proposed change" in the zoning classification of the Protesting Parties' property or of property within 200 feet of their property.

[2] For example, in the recent case of *Powell v. City of Houston*, 628 S.W.3d 838 (Tex. 2021), the Supreme Court of Texas explained that zoning commissions must "recommend *boundaries and regulations* for zoning districts" and "must make a preliminary report, hold public hearings before submitting recommendations to the governing body of the municipality, and *notify owners of property in or near those zones* of hearings beforehand." *Id.* at 859 (emphasis added). As support for the latter italicized statement, the high court cited Texas Local Government Code § 211.007(c), which states that written notice of each public hearing before the zoning commission must be given to property owners of proposed changes in zoning "classifications" of their property, or within 200 feet of their property. *Id.*

The City Parties do not dispute that the LDC Revision does indeed propose such changes.

The City Parties' only notice argument based on the statutory text is that the written-notice provision of § 211.007(c) applies to "*a* proposed change in *a* zoning classification," whereas the LDC Revision is not a single proposed change to a single classification. But by this reasoning, a separate public hearing would have to be held on the enactment or change of each individual zoning regulation or district boundary, because the provision for notice by publication similarly states, "*A* regulation or boundary is not effective until after a public hearing . . . ." *Id.* § 211.006(a). Neither is true, for although the word "a" can mean "one single," it also can mean "any,"[3] and under the Code Construction Act, "[t]he singular includes the plural." TEX. GOV'T CODE ANN. § 311.012(b).

B. The statute does not differentiate between legislative and quasi-judicial zoning actions.

In support of their position that written notice applies only to the rezoning of small areas, the City Parties attempt to distinguish legislative zoning actions from adjudicative or quasi-judicial zoning actions. According to the City Parties, comprehensive zoning is legislative and requires only notice by publication, while zoning of small areas is quasi-judicial, requiring written notice.[4]

[3] NEW OXFORD AMERICAN DICTIONARY 1 (Angus Stevenson & Christine Lindberg eds. 3d ed. 2010).

[4] Under Texas law, however, rezoning by ordinance generally is considered legislative, for it is an exercise of the municipality's legislative powers. *Tippitt*, 616 S.W.2d at 175; *Watkins*, 275 S.W.2d at 480. In contrast, a decision by a board of adjustment about whether to grant a variance would be an adjudicative or quasi-judicial zoning activity. *See, e.g.*, TEX. LOC. GOV'T CODE ANN. §§ 211.008–.011, 211.014; *see also City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006) (board of adjustment is a quasi-judicial body); *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 146 (Tex. App.—Austin 2005, no pet.) (same).

But, the zoning statute does not draw this distinction. By its terms, the written-notice provision of § 211.007(c) applies to "a proposed change" in zoning classification, regardless of whether the change is characterized as legislative or quasi-judicial.[5]

C. The cited case law does not require a different result.

The City Parties maintain that case law supports their position that the comprehensive revision of zoning ordinances fall within a sort of unwritten exception to the written-notice requirement. We address these sources in order of their strength.

1. The California cases

Of the cases the City Parties cite, two California cases from the early 1960s most nearly support their position.

In *Wanamaker v. City Council of City of El Monte*, 200 Cal. App. 2d 453, 457–58, 19 Cal. Rptr. 554, 556–57 (Ct. App. 1962), a California statute required written notice to owners of properties within 300 feet of the property being rezoned, and the city replaced its existing zoning ordinance with an entirely new one. The court held written notice was not required because the complete revision "effected a repeal of all existing ordinances." *Id.*, 200 Cal. App. 2d at 457, 19 Cal. Rptr. at 556–57. As a second reason for treating the comprehensive revision as an exception to

[5] *See also Powell*, 628 S.W.3d at 859 (zoning commissions must "recommend boundaries and regulations for zoning districts" and "must make a preliminary report, hold public hearings before submitting recommendations to the governing body of the municipality, and notify owners of property in or near those zones of hearings beforehand") (citing TEX. LOC. GOV'T CODE ANN. §§ 211.007(b) (unless city's governing board follows the alternative procedure of holding a public hearing jointly with the zoning commission, city's governing body may not hold a public hearing until it receives the commission's final report), and 211.007(c) (written notice of each public hearing before the zoning commission must be given to property owners of proposed change in zoning classifications of their property, or within 200 feet of their property)).

the written-notice requirement, the *Wanamaker* court emphasized that written notice would have to be given to owners of property outside the city, but within 300 feet of the city limits, even though the court characterized those property owners as unaffected by the proposed changes. A year after this decision, a different division of the California appellate court followed *Wanamaker* in *Claremont Taxpayers Ass'n v. City of Claremont*, 223 Cal. App. 2d 589, 591, 593, 35 Cal. Rptr. 907, 908, 909 (Ct. App. 1963). In *Claremont,* the comprehensive revision expressly, rather than impliedly, repealed the prior zoning ordinance.

The City Parties argue that the same reasoning applies here. The notice provisions of the statute construed in the California cases are similar to the notice provisions in the Texas statute, and like California, Texas common law holds that "a statute that covers the subject matter of a former law and is evidently intended as a substitute for it, although containing no express words to that effect, operates as a repeal of the former law to the extent that its provisions are revised and its field freshly covered."[6]

But the California cases are distinguishable for four reasons. First, the *Wanamaker* and *Claremont* courts did not rely on their state's statutory text, as we are constrained to do. Second, unlike the California statute reviewed in those cases, the Texas statute provides a home-rule municipality an alternative to individual written notice in that the governing body may, by a two-thirds vote, prescribe the type of notice to be given a public hearing held jointly with the zoning commission. *See* TEX. LOC. GOV'T CODE ANN. § 211.007(d). Thus, in Texas, there is no need to imply an exception to the written-notice requirement because one already exists—

[6] *McInnis v. State*, 603 S.W.2d 179, 183 (Tex. 1980) (op. on reh'g); *see also James v. City of Round Rock*, 630 S.W.2d 466, 468 (Tex. App.—Austin 1982, no writ) (per curiam) (noting that a zoning ordinance can be expressly or impliedly repealed, though the ordinance in that case was expressly repealed).

and according to the treatise on which the City Parties rely, this exception was created specifically to address the problem of comprehensive revisions, though it is not limited to that application. *See* John Mixon, James L. Dougherty Jr., & Brenda N. McDonald, TEXAS MUNICIPAL ZONING LAW, § 7.002 (LexisNexis 3d ed. 2019). Third, unlike the California municipalities, the City Parties deny that the LDC Revision acts as a repeal of the existing zoning ordinance. The proposed LDC Revision would supersede the existing zoning ordinance but would be codified in a different place, and the existing zoning would remain because other municipal ordinances refer to it. And fourth, the Texas statute differs from the California statute in that Texas does not require written notice to be given to owners of property located in territory annexed to the municipality that is not included on the municipal tax roll. *See* TEX. LOC. GOV'T CODE ANN. § 211.007(c).[7]

The remainder of the cases the City Parties cite from other jurisdictions are factually distinguishable, and so do not support their arguments that a comprehensive revision requires notice only by publication. One such case addressed the initial adoption of a zoning ordinance in the affected area rather than changes to existing zoning requirements,[8] while the remaining cases address zoning ordinances materially different from the Texas statute.[9]

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[7] Moreover, we are not persuaded by the California courts' reasoning that comprehensive revisions should be an exception to the written-notice requirement because they would require written notice to owners of property near, but outside of, the municipality; such notice would be required of zoning changes near the municipality's boundaries, regardless of whether the change was comprehensive or to a single property.

[8] *See Miles v. Bd. of Cty. Comm'rs of Cty. of Sandoval*, 1998-NMCA-118, ¶¶ 15-17, 125 N.M. 608, 613, 964 P.2d 169, 174.

[9] *See, e.g., Quality Refrigerated Servs., Inc. v. City of Spencer*, 586 N.W.2d 202, 206 (Iowa 1998) (ordinance required personal notice only as to "special exceptions, variances, administrative appeals, and applications for rezoning"); *Sunset Islands No. 3 & 4 Props. Owners, Inc. v. Miami Beach Yacht Club*, 447 So. 2d 380, 380–81 (Fla. Dist. Ct. App. 1984) (per curiam) (ordinance allowed notice by publication to "amend, supplement, change, modify or repeal the regulations

2. The Texas cases

Regarding Texas case law, the City Parties rely on *FLCT, Ltd. v. City of Frisco*, 493 S.W.3d 238 (Tex. App.—Fort Worth 2016, pet. denied), in which the City of Frisco changed a zoning regulation in a way that prevented the plaintiffs from selling alcoholic beverages on their property. The City Parties initially quote the case as holding that individual written notice under section 211.007(c) was not required, in part because the changes in the zoning ordinance applied "district-wide or across multiple districts." *See id.* at 265. But the *FLCT* court actually wrote, "additional notice to individual property owners under section 211.007(c) is not required in a case such as this one, in which a zoning ordinance change applies district-wide or across multiple districts *without a change in classification of the individual owners' properties*." *Id.* (emphasis added). The court stated that the plaintiffs' property in that case was located in the city's C-1 commercial district both before and after the change in the zoning ordinance, *id.*, and the result would be the same whether "classification" was interpreted to be synonymous with "district" or to refer to the various uses permissible in the district. *Id.* at 264 & 265 n.13.

The case does indeed include some of the same reasoning as *Wanamaker*, but given that the written-notice provision was inapplicable on its face due to the absence of any change in classification, we consider such language dicta.

D. The cited treatise does not require a different result.

The City Parties also rely on a treatise as support for their position. The treatise they cite states that the Texas statute establishes one procedural path applicable to original zoning ordinances, and a second procedural path for zoning amendments reclassifying specific tracts, but does not specify which path applies to

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and boundaries herein established"); *Tillery v. Meadows Constr. Co*., 284 Ark. 241, 242–43, 681 S.W.2d 330, 332 (1984) (ordinance required personal notice only for site-specific rezoning).

comprehensive revisions of existing zoning ordinances. Mixon, et al., TEXAS MUNICIPAL ZONING LAW, § 7.002. Although the authors state that comprehensive revisions "can with equal logic" be treated the same way as initial zoning or as reclassifications requiring written notice or its alternative, they conclude that "courts can (and should) decide that neither the statute's written-notice provision nor its provision of protests rights apply." *Id.* For the textual reasons previously explained, we do not find this argument persuasive.

E. The City Parties' expert's affidavit does not affect the analysis on a pure question of law.

The City Parties also rely on the affidavit of Brenda McDonald, who is both a co-author of the Mixon treatise and the land-use attorney retained by the City to advise it on the LDC Revision. McDonald attests to her opinion of the statute's meaning and her knowledge of the notice practices of other cities.

The affidavit regarding McDonald's legal opinion does not affect our analysis because statutory construction is a question of law for the Court, and an expert may not opine on pure questions of law. *See Greenberg Traurig of New York, P.C. v. Moody*, 161 S.W.3d 56, 94 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *Upjohn Co. v. Rylander*, 38 S.W.3d 600, 611 (Tex. App.—Austin 2000, pet. denied) (same). The practices of other cities similarly do not affect our analysis of a pure question of law.

F. Requiring written notice is not an absurd result that the legislature could not have intended.

Although the trial court's judgment declaring that the written-notice provision applies accords with the unambiguous language of the statute, the City Parties argue that applying the statute's plain language would produce an absurd result.

First, they assert that there are over 250,000 property owners in Austin, each of whom would be entitled to written notice. We do not consider that an absurd

result. The same written-notice provision applies to cities that are a fraction of that size. Moreover, notices are mailed to the property owner's address as indicated on the municipal tax roll, but tax statements are also mailed to all property owners. We see no reason why requiring written notice of the former is nonsensical while the latter is not.

The City Parties give other reasons they contend would make it absurd to apply the statute as written, but the requirements of which they complain are not statutory. For example, they state that the City Code requires that if written notice is required, the notice must be sent not only to owners of property within 200 feet of the property that is being reclassified, but to owners or utility-account holders within 500 feet of the property to be reclassified, as well as to certain registered environmental and neighborhood organizations. They also assert that they would be required to send a single property owner separate notices for the proposed reclassification of the owner's property and for each property within 200 feet that is to be reclassified. The statute, however, neither requires such expanded written notice nor prevents the City from providing a single notice that includes this information.

Further, home-rule municipalities who find written notice overly burdensome have an alternative:

> The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

TEX. LOC. GOV'T CODE ANN. § 211.007(d). Inasmuch as the legislature has provided an alternative to written notice, we cannot conclude that construing the written-

notice provision in accordance with its unambiguous terms would produce such an absurd or nonsensical result that the legislature could not have intended it.

We conclude that the trial court did not err in ruling that the written-notice provision of section 211.007(c) applies. We overrule this part of the City Parties' first issue and affirm that part of the judgment.

IV. PROTEST

Section 211.006 of the zoning enabling statute contains the following protest provisions:

> (d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:
>
> (1) the area of the lots or land covered by the proposed change; or
>
> (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.
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> (e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.
>
> (f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

TEX. LOC. GOV'T CODE ANN. § 211.006(d)–(f).

The City Parties assert that protest rights are co-extensive with the right to written notice, and because owners of Austin property are not entitled to written

notice of the proposed zoning changes, they also are not entitled to protest those changes.

We can see no basis for the City Parties' position in the statutory text. Changes to "zoning regulations and zoning district boundaries" require notice by publication, yet a property owner has the right to protest "a proposed change to a regulation or boundary." *Compare* TEX. LOC. GOV'T CODE ANN. § 211.006(a) (public hearing required to adopt or change[10] a regulation or boundary) *with id*. § 211.006(d) (property owners have the right to protest the proposed change to a regulation or boundary). Indeed, protest rights predate the right to written notice of "proposed changes in classification" by more than twenty years.[11]

As support for their position, the City Parties rely on *FLCT*, the Mixon treatise, and their expert's affidavit.

The City Parties say that *FLCT* provides guidance, but protests were not at issue in that case, and thus, the *FLCT* court did not discuss them.

The Mixon treatise explains that the 1985 amendment to the statute allows home-rule cities to adopt comprehensive revisions without mailing written notice to property owners if the city instead holds joint hearings of the zoning commission and the city's governing body, and that the "1985 amendment was formulated to facilitate a particular community's comprehensive revision." Mixon, et al., TEXAS

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[10] *See* TEX. LOC. GOV'T CODE ANN. § 211.002 ("A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.").

[11] Property owners have had these protest rights since the original predecessor statute was enacted in 1927. *See* Act effective June 14, 1927, 40th Leg., R.S., ch. 283, § 4, 1927 TEX. GEN. LAWS 424, 425 (notice by publication of hearing date required to determine, establish, or enforce zoning regulations, restrictions, or boundaries); *id.* § 5 (authorizing protest of the amendment, supplementation, change, modification, or repeal of zoning regulations, restrictions, or boundaries, and incorporating the same requirement of notice by publication). It was not until 1949 that the statute was amended to add the right to protest "proposed changes in classification." *See* Act of Apr. 21, 1949, 51st Leg., R.S., ch. 111, § 1, 1949 TEX. GEN. LAWS 205, 205.

MUNICIPAL ZONING LAW, § 7.002. The authors then assert, "Given that Texas law was not clear before the 1985 amendment, courts can (and should) decide that, when a municipality adopts a comprehensive revision that replaces its old zoning ordinance, . . . the governing body can adopt the ordinance by simple majority vote, even if more than 20 percent of affected landowners object." *Id*. But this interpretation of the statute is not based on the statutory text. Moreover, if this interpretation were correct, then it would have been unnecessary for the legislature to add the alternative, joint-hearing procedure as a way "to facilitate a particular community's comprehensive revision" by dispensing with the need for written notice. *But cf. Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 551 (Tex. 1981) ("[T]he legislature is never presumed to do a useless act.").

Finally, their expert attested that many other Texas cities have followed the same procedure for comprehensive revision that Austin is now pursuing, that is, declining to give written notice of hearings before the zoning commission and to recognize protest rights. But, statutory construction is a question of law that is not answered by observing that some cities have interpreted the statute differently.

We conclude that the written-notice provision of Texas Local Government Code § 211.0007(c)—or the alternative-notice provision of § 211.006(c)—and the protest provisions of § 211.006(d)–(f), apply to the LDC Revision. Thus, we overrule the remainder of the City Parties' first issue.

V. RELIEF GRANTED

Regarding the protest provision, the trial court's final judgment requires "a three-fourths majority vote of all City Council Members to adopt any zoning change for any property that has been protested by the owners of at least 20% of the relevant property, pursuant to Texas Local Government Code § 211.006(d), in order for such change to be effective." In their second issue, the City Parties argue that the

declaratory and injunctive relief awarded departs from the scope of the statute. Specifically, they contend that the relief granted is overly broad or impermissibly vague for failing to clarify how any protest calculation would operate.

But as the appellees correctly point out, the Third Court of Appeals' precedent, which we are bound to apply, holds that complaints such as these must be raised in the trial court to preserve them for appellate review.[12] The City Parties did not do so. In their pre-trial brief, the City Parties expressed concern that evaluating protests under these facts would be problematic, asking, "[W]hat is the applicable land area? Twenty percent of what?" But although the City Parties raised these *questions*, they did not raise the *complaint* that the final judgment left their questions unanswered.[13] Thus, this issue was not preserved for review.

We overrule the City Parties' second issue.

VI. CONCLUSION

In matters of statutory construction, we are called upon to say what the law is, not what it should be, and the statute as written does not distinguish between revisions of varying degrees. Because the LDC Revision proposes changes in zoning districts, boundaries, regulations, and classifications, we conclude that the statute's written-notice and protest provisions apply. We further conclude that, under the Third Court of Appeals' precedent, the City Parties have failed to preserve their complaints that trial court's final judgment does not inform them with sufficient

[12] *See, e.g.*, *Ford v. Ruth*, No. 03-14-00460-CV, 2016 WL 1305209, at *2 (Tex. App.—Austin Mar. 31, 2016, pet. denied) (mem. op.) (complaint that permanent injunction was overly broad was not preserved in the trial court); *Basse Truck Line, Inc. v. Tex. Nat. Res. Conservation Comm'n*, No. 03-02-00272-CV, 2003 WL 21554293, at *7 (Tex. App.—Austin July 11, 2003, pet. denied [mand. denied]), supplemented, No. 03-02-00272-CV, 2003 WL 22207216 (Tex. App.—Austin Sept. 23, 2003, no pet. [mand. denied]) (complaint that permanent injunction is unsupported by pleadings or evidence held waived by failure to raise the complaint in the trial court).

[13] The City Parties did not seek declaratory relief answering these questions; they pleaded only for declaratory relief that the written-notice and protest provisions do not apply at all.

specificity how to calculate whether a protest's twenty-percent threshold has been satisfied. Thus, we affirm the trial court's judgment.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Zimmerer and Wilson.